LIBRARY
SUPREME COURT U. S.

Office - Supreme Court, U.S.
FILED
MAR 1 1958
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No. 822.

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., a Delaware Corporation, THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an Association Having Its Principal Place of Business in Chicago, Illinois, and R. W. RIVENBARK, S. L. SHANNON, GEORGE A. SMITH and R. M. TEDLOCK, Individually and As and Constituting the Members of the EASTERN AIR LINES PILOTS SYSTEM BOARD OF ADJUSTMENT, under the Railway Act, 45 U.S.C.A., Paragraph 184, and Section 3 of 45 U.S.C.A., Paragraph 153, under Agreement Between Eastern Air Lines, Inc., and The Air Line Pilots in the Service of Eastern Air Lines, Inc., As Represented by The Air Line Pilots Association, International, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami 32, Florida,
Attorney for Petitioner.

WARD & WARD,
1240 duPont Building,
Miami 32, Florida.

INDEX

Opinions and Judgment Below in the United States Court of Appeals, 5th Circuit, Dated December 5, 1957 (Copies of the Opinion and Judgment are attached as Appendices to this Petition) 1

Jurisdiction under Rule 19, Sub-section (b) Outlined .. 1-2

Analysis of That Part of the Opinion of the Court of Appeals, 5th Circuit, in Which That Court Certifies That in Its Opinion the Supreme Court of the United States Has Not Passed upon the Question Submitted 2

Analysis of Factual Matters Which Raised the Question of Federal Jurisdiction 3

Analysis of Provisions of Bargaining Contract under the National Railway Labor Act Between Eastern Air Lines, Inc. and Air Line Pilots in the Service of Eastern Air Lines, Inc. 4-6

Question Presented As to Whether a Resignation Given by an Employee Protected under the National Railway Labor Act in 1950 As a Condition for Re-employment of a Pilot Can Be Merely Accepted by the Company in 1956 Without the Company Following the Procedure Outlined in Section 29 of the Bargaining Contract 7-8

Decision of System Board of Adjustment of Eastern Air Lines Upholding Right of Company to Accept a Six Year Old Resignation, but Without Any Findings As to a Discharge for Cause under the Provisions of the Contract 8-9

Analysis of Suit Filed by Petitioner, Paul S. Woolley, Pilot, in the United States District Court, Southern District of Florida 10-11

Analysis of Judgment of District Court Granting Summary Judgment in Favor of Eastern Air Lines, Inc., Against Petitioner 12-13

Analysis of Opinion of Circuit Court of Appeals, 5th Circuit, in which That Court Held That the Question

Presented Has Not Been Passed upon by the Supreme Court of the United States, in Which That Court, Following Its Previous Decision of *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, Upholds the Claim of Exclusive and Final Jurisdiction of the System Board of Adjustment in Similar Type Cases (Judgment and Opinion Attached As Appendices to Petition) 13-14

Questions Presented for Review 14

1. Were the United States District Court for the Southern District of Florida and the United States Court of Appeals, 5th Circuit, Correct in Holding under the National Railway Labor Act That a System Board of Adjustment Has Final Jurisdiction to Determine Any and All Employment Relations Between the Company and an Air Line Pilot, or Should the Courts Have Held That the System Board of Adjustment Only Had Jurisdiction on Matters Arising Out of the Contract Concerning the Procedure and Grounds for Discharge 14-15

2. Can an Air Line Company Coming Within the Provisions of the National Railway Labor Act Demand a Resignation from a Pilot Then Covered under the Provisions of the Bargaining Agreement As a Condition for Re-employment and then, Six Years Later, After Continuous Employment and After New Contracts Had Been Re-negotiated and Signed, Deprive the Pilot of His Contractual Rights and the Procedure Provided for Discharge in the New Contract 15-16

3. When It Is Admitted That the Discipline Procedure Leading Up to a Discharge Action by an Air Line Against One of Its Employees Who Is a Third Party Beneficiary to the Collective Bargaining Agreement Has Not Been Followed, and Admittedly the System Board of Adjustment Did Not Permit Any Testimony to Be Introduced or Considered on the Grounds for Discharge, but Simply

in Support of a Six Year Old Resignation, Did the Lower Court and the United States Court of Appeals Have the Right to Determine in the Nature of a De Novo Trial That Petitioner Had the Equivalent of Due Process and Adjudge on the Merits That There Might Have Been Sufficient Grounds for Discharge, and That the Procedure Used in Merely Accepting the Old Resignation Was a Satisfactory Substitute for the Procedure Established under the Contract 16-18

4. Can the Federal Courts on Reviewing an Action by a System Board of Adjustment under the National Railway Labor Act, on the One Hand Hold That the Decision of the System Board of Adjustment on a Resignation of an Employee Was Final and Conclusive, and That the District Court Had No Right to Review That Action, and When That Was the Only Question Determined by the System Board of Adjustment, Can the Federal Courts Then Reach out De Novo and Declare What the Merits of the Decision Would Have Been If the Section 29 Discipline Procedure Had Been Followed and Adequate Testimony Taken, When from the Very Nature of the Opinions of the Said Federal Courts It Was Conceded That the System Board of Adjustment Did Not Consider That Point 18

Analysis of Decision of 5th Circuit, Circuit Court of Appeals in *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13—January 19, 1956 18-20

5. Where an Air Line Employee, Then Being a Third Party Beneficiary under the Bargaining Contract under the National Railway Labor Act, Is Suspended for an Alleged Violation in the Spring of 1950, and Where No Final Determination Was Made One Way or the Other on That Suspension Right, and the Suspension Was Lifted and the Employee Was Reinstated on July 28, 1950, with Full Seniority Rights, but As a Condition Therefor the Company Exacted an Open Letter of Resig-

nation, Was That Resignation Effective After August 1, 1950, When the Employee Resumed His Employment, and Could the System Board of Adjustment or the Lower Federal Courts Thereafter Review the Reasons for That Suspension and Reinstatement, When Admittedly the Bargaining Contract Was Re-negotiated and a New Contract Entered Into in 1954 Which Outlined under Section 29 Thereof the Only Means and Methods of a Discharge for Cause of an Employee 21-24

6. Where an Air Line Employee under the National Railway Labor Act Has Served for Six Years After He Had Given a Resignation in 1950 As a Condition for Re-employment, and Where the Only Grounds by Which the Employment Was Severed in February, 1956, Were a Mere Letter from the Company Accepting the Six Year Old Resignation, and Where There Was No Provision in the Bargaining Agreement of 1954 for the Treatment of the Employees in a Different Class, and Where the System Board of Adjustment, Acting Without Any Contractual Background, Upheld the Acceptance of the Resignation As a Termination of the Employment and Specifically Did Not Pass on or Take Jurisdiction of Any Complaint for Grounds for Discharge under Section 29 of the 1954 Contract, Was It Proper for the United States District Court, Southern District of Florida, or the United States Court of Appeals, 5th Circuit, to Reach Out and Interpret That Action As the Equivalent of a Discharge for Cause on a Matter of Substance, and Hold That That Action Was Conclusive on the Employee's Rights, Without Ever Affording to the Third Party Beneficiary Employee the Opportunity to Have the Issues Framed under the Provisions of the Contract or Without Giving the Employee the Right to Present Testimony and Be Heard in Opposition to Any Claim of the Right to Discharge for Cause for Any

Action Which Took Place After August 1, 1950 up to February 6, 1956 23-24

Reasons for Granting of Writ—

1. The United States Court of Appeals, 5th Circuit, Has Rendered a Decision in Conflict with the Decision of the United States Court of Appeals for the District of Columbia Circuit, and United States Court of Appeals, 2nd Circuit.

   This Decision of the United States Court of Appeals, 5th Circuit, Is in Conflict with the Decision of *Edwards* v. *Capital Airlines*, 176 F. 2d 755, Which Was a Decision of the United States Court of Appeals, District of Columbia Circuit, and Which Decision Is Also in Conflict with the Decision of *Rychlik* v. *Pennsylvania Railroad Company*, 229 F. 2d 171—United States Court of Appeals, 2nd Circuit 24-26

2. The United States Court of Appeals, 5th Circuit, Has Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

   See Appendix—Opinion of Court of Appeals, 5th Circuit, in Which That Point Is Determined in the Opinion Itself.

   Also see Opinion by This Court of *Pennsylvania Railroad Company* v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480 26

3. The United States Court of Appeals, 5th Circuit, Has Decided a Federal Question in a Way in Conflict with the Applicable Decisions of This Court.

   This Decision Is in Conflict with the Decision in the Case of *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173, and in Conflict with the Opinion of This Court in *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325 ..... 20, 27

4. The United States Court of Appeals, 5th Circuit, in the Decision of This Case Has So Far Departed from the Accepted and the Usual Course of Judicial Proceedings and Has Sanctioned Such a Departure by a Lower Court As to Call for an Exercise of This Court's Power of Supervision.

The Case of *Ellerd* v. *Southern Pacific Railroad Co.*, 241 F. 2d 541, Holds That Where an Employee Has Been Deprived of Due Process of Law in Action for Reinstatement Before Adjustment Board, That Ruling Is Subject to Review by the Court 29-30

In the Case of *Nilva* v. *United States*, 77 S. Ct. 431, 352 U.S. 385, Four Members of This Court Held That under the Doctrine of Due Process of Law under the Federal Constitution One Accused Is Entitled to a Fair and Regular Trial, and That Doctrine When Applied to the Facts in This Case Will Show That Captain Paul S. Woolley under the Decision of the Circuit Court of Appeals, 5th Circuit, Was Deprived of Valuable Property Rights and Severed from Gainful Employment Protected to Him under the National Railway Labor Act by Procedures Before the System Board of Adjustment, and by the Action of the United States District Court, Southern District of Florida, Approved by Said United States Court of Appeals, 5th Circuit, Which Violate the Fundamental Concepts of Constitutional Protection and Due Process of Law Guaranteed under the United States Constitution 31-32

Appendix A—

Opinion United States Court of Appeals, 5th Circuit, in Case Number 16585, Paul S. Woolley, Appellant, v. Eastern Air Lines et al., Appellees—Appeal from District Court of the United States, Southern District of Florida—Decided December 5, 1957 ..... A1-A13

Appendix B—

Judgment and Extract from Minutes of December 5, 1957, in Case 16585—United States Court of Appeals, 5th Circuit A14

TABLE OF CASES

Edwards v. *Capital Airlines*, 176 F. 2d 755, 760 ..... 24, 25, 26
Ellerd v. *Southern Pacific Railroad Co.*, 241 F. 2d 541 ..... 29, 30
Moe v. *Eastern Air Lines, Inc.*, 246 F. 2d 215 28
National Railroad Adjustment Board, First Division, Award No. 5269, Docket No. 9519 23
Nilva v. *United States*, 77 S. Ct. 431, 441-2, 352 U.S. 385 31-32
Pennsylvania Railroad Company v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480, 128 Fed. Supp. 429, 229 F. 2d 171 ..... 26, 27
Poland v. *Glovers District Court of New York*, 111 F. Supp. 675 23
Sigfred v. *Pan American World Airways*, 5th Cir., 1956, 230 F. 2d 13 ..... 13, 18, 19, 20, 29
State ex rel. Murtagh v. *Department of Civil Service*, 42 So. 2d 65-69 23
Steele v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 27
Transcontinental & Western Air, Inc., v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325 20
Watkins v. *City of Seattle*, 99 P. 2d 427, 432 23

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No.

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

PAUL S. WOOLLEY petitions the Supreme Court of the United States for a review on certiorari, reviewing the decision of the United States Court of Appeals for the Fifth Circuit in case number 16585, opinion rendered December 5, 1957, mandate issued January 24, 1958, in which the decision of the United States District Court in and for the Southern District of Florida was affirmed.

The grounds upon which your petitioner seeks to invoke the jurisdiction of the Supreme Court of the United States

are based upon the provisions of Rule 19, sub-section (b), as follows:

1. The United States Court of Appeals, 5th Circuit, has rendered a decision in conflict with the decision of the United States Court of Appeals for the District of Columbia Circuit, and United States Court of Appeals, 2nd Circuit.

2. The United States Court of Appeals, 5th Circuit, has decided an important question of Federal law which has not been but should be settled by this Court.

3. The United States Court of Appeals, 5th Circuit, has decided a Federal question in a way in conflict with the applicable decisions of this Court.

4. The United States Court of Appeals, 5th Circuit, in the decision of this case has so far departed from the accepted and the usual course of judicial proceedings and has sanctioned such a departure by a Lower Court as to call for an exercise of this Court's power of supervision.

In the opinion above referred to, which is reported in 250 F. 2d 86, rendered December 5, 1957, the United States Court of Appeals for the Fifth Circuit on two occasions said (p. 90):

> "The Supreme Court has not directly passed on the question here posed."

Again later in the opinion the Court said (p. 91):

> "As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court."

The case in the United States of Appeals for the Fifth Circuit involves a question of federal law under the National Railway Labor Act, 45 U.S.C.A., Paragraph 184.

As appears from the opinion, Paul S. Woolley was a captain pilot employed by Eastern Air Lines. He had been in the employ of said company for about 20 years. In the winter of 1950 Eastern Air Lines had suspended Mr. Woolley, contending that he had engaged in unsafe flying practice and in certain dissensions with a tower operator at the Detroit Airport.

At that time Captain Woolley as a pilot was represented by the Air Line Pilots Association as a bargaining representative.

A petition to review that discharge was filed under the processes set forth in the then contract between Eastern Air Lines, Inc. and the Air Line Pilots Association for the use and benefit of the air line pilots connected with Eastern Air Lines.

For reasons not necessary to mention herein, the Company did not press the charges against Captain Woolley, and his guilt or innocence of the charges was not determined.

In July, 1950, he was put back to work. The bargaining representative, Air Line Pilots Association, of its own volition and not through any grievance committee hearings or any official hearings, arranged for Captain Woolley to be re-employed, but as a condition for the re-employment, not for a discharge, Captain Woolley was required to sign a letter of resignation which could be accepted by Eastern's Vice-President in Charge of Operations any time in the future.

Captain Woolley gave that letter of resignation not as a condition for severing his employment, but as a condition to continuing with his employment or re-employment, as the case may be.

Tr. 15 shows an agreement between Eastern Air Lines, Inc., and the Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by Air Line Pilots Association, which became effective July 1, 1954.

Captain Woolley was an employee and one of the Senior Captains at that time.

Section 29 of said contract provided, among other things, that (Tr. 62):

> "A pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and such pilot shall not be disciplined or dismissed without an investigation and hearing provided that the pilot makes written request for an investigation and hearing within seven (7) days after receiving such notification."

It is then provided (Tr. 63):

> "Prior to such investigation and hearing, the Company shall furnish such pilot a copy of the precise charge or charges against him, and he shall not be required to give testimony or furnish evidence prior to the actual time of the investigation and hearing. He shall be given the necessary time in which to prepare and to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives."

These are the provisions in the contract with reference to notification of discharge or suspension, the right to be heard fully before the Junior Executive of the Company,

and then with right of appeal to the Senior Vice-President in Charge of Operations (Tr. 63).

After hearing before the Senior Officer it was provided (Tr. 64):

> "Within ten (10) days after the close of such appeal hearing, the Company shall announce its decision in writing and shall furnish the pilot, or his duly accredited representative a copy thereof."

Further provision is made for taking of testimony in the hearing before the Senior Operations Officer of Eastern Air Lines.

Then it is provided in paragraph 6 of Section 29 (Tr. 65) that if any appeal was to be made by the pilot from that decision of the Senior Officer, it should be made to the Eastern Air Line Pilots System Board of Adjustment as provided for in the agreement between Eastern Air Lines, Inc., and Air Line Pilots in the Service of Eastern Air Lines, Inc.

That agreement under which the Grievance Board was constituted is shown at Tr. 78. It provided, among other things, that in compliance with Section 204, Title II of the Railway Labor Act as amended, there was established a System Board of Adjustment for the purpose of adjusting and deciding disputes arising under the terms of the Pilots Agreement and which are properly submitted to it. The Board was to consist of four members, two of whom should be selected and appointed by the Association and two by the Company.

Paragraph (e) provides (Tr. 80):

> "The Board shall have jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or

out of interpretation or application of any of the terms of the Pilots Agreement."

Paragraph (f) provides (Tr. 80):

> "The Board shall consider any dispute properly submitted to it by the President of the Association or by the Chief Operating Officer of the Company, when such dispute has not been previously settled in accordance with the terms provided for in the Pilots Agreement."

In paragraph (h) (Tr. 81) provision was made for the operation and method of the appeal, and as part of that paragraph it was provided (Tr. 82):

> "No matter shall be considered by the Board which has not first been handled in accordance with the appeals provisions of the Pilots Agreement, including the rendering of a decision thereon by the Chief Operating Officer of the Company."

Under paragraph (n) (Tr. 83):

> "Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under law with respect to disputes which are not decided under the procedure established herein."

While that contract and the Grievance Board provisions were still in force and effect, on February 20, 1956, Eastern Air Lines wrote a letter to Captain Woolley purporting to accept the resignation which he had given on July 28, 1950. The only notice given is referred to in the printed opinion

(p. 3) in which the Vice-President of Eastern Air Lines wrote Woolley as follows:

> "* * * I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Inc., is hereby accepted to become effective immediately."

Woolley replied to the Company by stating that he had not had the benefit of the notices called for under Section 29 of the bargaining agreement; that there had been no investigation or hearing or notification of specific charges (Court's Opinion, p. 3).

The answer by the Company is copied in the Court's opinion (Letter of February 27, 1956, pp. 4-5):

> "Dear Mr. Woolley:
>
> This will acknowledge your letter of February 27, 1956. My letter to you dated February 20, 1956, was simply an acceptance of your resignation. Consequently I do not think Section 29 of the Agreement between Eastern Air Lines and the Air Lines Pilots Association is applicable. However, if you wish to discuss the matter with me I will be glad to talk with you on Wednesday, February 29, 1956, at 10:00 a. m. in my office.
>
> For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956, enroute into Miami. Your conduct in handling those flights confirms other information which has come to my attention from time to time."

The Company at no time followed the procedure set forth in Section 29 of the contract. There were never any specific charges filed under the terms of the contract of

1954. There was no procedure followed of a hearing before the Junior Officer or before the Senior Officer. No testimony was taken before the Senior Officer. No record was made and no report was filed according to that requirement.

This shows further by the letter of March 2, 1956, from S. L. Shannon, Senior Vice-President (Opinion, p. 5):

> "This is to confirm what I told you February 29th in my office when you came in to discuss your case. I am not changing my decision, and my letter to you of February 20, 1956 still stands."

There was still no effort to follow the discipline procedure set forth in Section 29, nor was there any actual issue raised under the Section 29 procedure which would give the Grievance Board any jurisdiction of review.

Nevertheless, the Grievance Board, otherwise known as the Board of Adjustment, met Woolley and a representative of the Air Line Pilots Association, an attorney working for that Association, appeared at the Grievance Hearing. Eastern Air Lines was represented at the hearing by its counsel. S. L. Shannon, the Senior Vice-President who had accepted the resignation after six years, was a member of that Board.

The record in the case clearly disclosed that the attorney for Woolley strenuously objected to the hearing and sought the adjudication that the Board had no jurisdiction because a resignation given in 1950 as a condition for re-employment could not be valid grounds for a discharge six years later.

The Board only considered the point as to whether or not the Company had a right to accept the letter of resignation. It did not pass upon or purport to pass upon

the merits of the discharge or whether the discipline procedure required under Section 29 had been followed. The decision of the Board was as follows (Tr. 88):

"The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there was not sufficient cause or ground for his involuntary dismissal.

The Board finds:

1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association, International, on the one hand and the Company on the other hand;

2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

Decision of the Board:

Grievance denied.

Signed at Miami, Florida August 1, 1956."

See, also, same excerpt from Opinion, page 89.

Captain Woolley then filed a suit in the United States District Court, Southern District of Florida, in which he sought a declaratory judgment determining his rights, and asked for a mandatory injunction requiring the Board of Adjustment to cancel and discharge its adverse order. But here the opinion misconstrues the relief the petitioner sought. The relief sought is set forth Tr. 13.

It was first asked that the District Court declare that a resignation given in 1950 as a condition for re-employment could not be used as a basis for a discharge simply by accepting the resignation without any other grounds, in 1956. In other words, the relief sought was a declaratory decree to the effect that the pilot could only be disciplined or discharged under the procedure set forth in Section 29 of the contract; that since the bargaining agreement was binding upon all employee pilots, he, Woolley, had a vested right and a constitutional contractual right to be discharged only under the provisions of that contract; that no provisions were contained in any bargaining contract whereby the Air Line Pilots Association or Eastern Air Lines could have separate or distinctive types of employment; that the Air Line Pilots Association had to represent all employee pilots on the same basis, and all had the same right.

The suit simply asked that the Court in effect declare that the practice of requiring a resignation in advance of an employment was contrary to public policy and was a violation of the terms of the Railway Labor Act.

The Court was asked to order that the Grievance Board be directed to meet and to rescind its order and findings upholding the power of Eastern Air Lines to simply accept the six year old resignation and to order that it had power only to pass upon disputes which came

under the jurisdictional grounds in the contract, and not otherwise.

Paragraph b of the prayer (Tr. 13) requested the Court, upon setting aside the decision of the Grievance Board of August 1, 1956, to reinstate the plaintiff to his full rights and seniority in the following manner: that upon the setting aside of the Grievance Committee or Board improper award, that the Court direct that

> "plaintiff be restored to all back salary and fringe benefits by way of seniority, and that plaintiff's rights will be protected unless and until the said Eastern Air Lines, Inc., shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause." (Tr. 13).

The opinion of the Court completely misconstrued the relief sought because, as set forth in the opinion, the Court took this view (Opinion, p. 89):

> "It will be seen from the prayers of the complaint that its purpose was to review and have set aside the decision of the System Board of Adjustment."

In a sense that is true, but actually, petitioner was not questioning the merits of a hearing of the Board of Adjustment under the Railway Labor Act, because it was contended no such hearing was ever held. We were simply attempting to have the Court set aside the action of Eastern Air Lines whereby they attempted to discharge a third party beneficiary under the bargaining contract simply by accepting a six year old resignation, when there was no provision in the bargaining contracts for such a special type of employment. The bargaining agreement of 1950 was similar to the renewal agreement of 1954.

The only thing we asked the Court to do was to hold that that was not a proper ground for discharge, and that it did not come within the grievance or discipline hearings or jurisdiction of the Junior Officer, the Senior Vice-President or the Board of Adjustment.

The Lower Court (United States District Court, Southern District of Florida) granted a summary decree in favor of the Eastern Air Lines Association and the other defendants by stating (Tr. 381):

> "It is unquestionable that the System Board of Adjustment possesses the power, as a tribunal of last resort, to deny a grievance of wrongful discharge when that Board finds that the grounds for discharge were for good and sufficient reasons, and that such decision is not reviewable by the Courts. But the Plaintiff contends that the Board in denying his grievance merely went into the question of the unqualified right of the Defendant Eastern to accept a certain letter of resignation which the Plaintiff had sent to Eastern some six years ago as part of a settlement of an altercation which he had with the Company at that time. Plaintiff claims that a discharge based on the acceptance of such a letter of resignation is a wrongful discharge. But the Court is of the opinion that that question need not be decided in this case for the Board patently considered the acceptance as merely a vehicle employed in the discharge and if the Board considered the six year old offense it did so only as a circumstance to be considered along with the 1956 charges."

Then the Lower Court (Tr. 384) summarized statements of counsel before the Adjustment Board which the Court said created the issue:

> "'I believe that the resignation is valid. It was properly accepted by the Company and that should conclude the case. However, I think we can also show

even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severance of his employment should be upheld by this Board.' "

The Appellate Court, to wit, the United States Court of Appeals, in its opinion even went beyond the position taken by the Lower Court when on page 90 it said:

"The first question that must be resolved, therefore, is posed by the contention of the appellees that in the circumstances here outlined the courts are in effect ousted of jurisdiction. If this contention is correct we need proceed no further in an effort to appraise the correctness of the Adjustment Board's decision.

The Supreme Court has not directly passed on the question here posed. The statute authorizes the creation by air lines of system boards of adjustment to aid in the stated policy of avoiding any interruption to commerce and providing for the prompt and orderly settlement of labor disputes, including those arising out of the interpretation or application of collective bargaining agreements, 45 U.S.C.A., Sec. 151(a). Reference to the various provisions of the Railway Labor Act makes clear that such system boards are given the authority to make final binding decisions touching on the application and construction of collective bargaining agreements, especially if the bargaining agreement expressly includes the right of appeal to such a board and if the articles between the air line and the bargaining agent setting up the system board expressly state, as does that of Eastern Air Lines Pilots System Board of Adjustment, that 'decisions of the Board in all cases properly referable to it shall be final and binding upon the parties thereto.' "

Then the Court relied upon its previous opinions in the case of *Sigfred* v. *Pan American World Airways*, 5th Circuit, 1956, 230 F. 2d 13, and quoted this statement:

" 'In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to make the awards of such boards final and binding. Therefore, giving normal effect to these words, we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding.' "

QUESTIONS PRESENTED FOR REVIEW.

We directly challenge the jurisdiction of any Board of Adjustment to do more or to have more jurisdiction than that which was specifically covered in the bargaining contract, or to do other than to follow the procedure set forth in Section 29 of the grievance section. The Board only had the right on review to determine if there was reasonable or good ground for discharge after all of the procedure had been followed through.

We contended then and do contend now that the agreement between the Air Line Pilots Association and Eastern Air Lines above referred to, beginning Tr. 78, in paragraph (e) specifically restricted the Board's jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Pilots Agreement (Tr. 80).

We contend that the pilots agreement made no allowance and no provision and provided for no authority for the Company to make a separate contract of employment with a pilot so that some of the pilots were operating from day to day with resignations hanging over their heads and other pilots not so unfortunate were protected by the bargaining agreements.

The very preamble of the contract referred to (Tr. 18) refers to the fact that

> "The Air Line Pilots Association, International, has furnished to the Company proof that a majority of the Air Line Pilots employed by the Company have designated the Association to represent them and in their behalf negotiate and conclude an agreement with the Company as to hours of labor, wages, and other employment conditions covering the pilots in the employ of the Company in accordance with the provisions of the Railway Labor Act, as amended."

Nowhere, does it appear that there was any exception to their representation, or that the Courts could read into that contract an exception to the effect that the Company could make its own employment agreement with pilots of equal rank by having them give a resignation before they went to work, and then permit them to be fired upon the whim or caprice of an officer.

The point involved here, in addition to the above matters, is that both the United States District Court, Southern District of Florida, and the United States Court of Appeals for the Fifth Circuit, ignored the point involved, that is to say, whether under the Railway Labor Act an employee protected as a third party beneficiary may be deprived of the benefits of the bargaining contract under which he is bound through the method of the employer exacting a resignation which could be held over the head of the employee and exercised at any time.

The Lower Court, as we pointed out above, held that it was not necessary for it to pass on that point because the employee, the Air Line Pilot, had submitted his arbitration and question of discharge to the Adjustment Board, and that it had the right, and the sole, final and exclusive right, to conclude the question of the wrongful discharge, even though the procedure specified in the contract, Section 29, was not carried out.

In effect, the Lower Court held that the employee had the equivalent of a trial under the procedure outlined, although the exact procedure was not followed as required under the contracts.

The Appeal Court, as shown in the Opinion (p. 91), then said:

> "There can be no doubt here that the board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction. It cannot therefore be questioned that, in the language of the articles establishing this particular System Board of Adjustment the case was 'properly referable to it.'
>
> We hold therefore that the rule of stare decisis requires that we adhere to the Sigfred and Majors opinions and hold that the complaint did not state a claim against defendants upon which relief could be granted.
>
> As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court.
>
> • • •
>
> The Board accepted some of this testimony, as it said, only as bearing on the sufficiency of reasons for accepting the resignation and not to be considered as being sufficient bases for grounds of discharge, if the Board held the resignation ineffective. As we have said, the Board held the evidence constituted 'good and sufficient reason' to accept the resignation.
>
> The trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge, and without expressly deciding whether the action of the defendant air line was an

authorized acceptance of an outstanding resignation or a discharge for cause"

and the appeal opinion quoted from the Lower Court as follows (p. 91):

> "'The issue being thus clearly presented to the Board and the Board having decided that the Defendant Eastern Air Lines acted "for good and sufficient reasons and that the Company did not act arbitrarily or capriciously", this Court does not have any authority to set aside that Board's decision.'"

The opinion continues:

> "We think this decision was correct."

Then the Appellate Court in its opinion, after having stated that the Supreme Court of the United States had never passed squarely on this question, purported to review the evidence which had been considered by the System Board only on the question of the resignation, and apparently retried the case *de novo*.

The error complained of may be briefly summarized as follows:

1. No specific charges were ever filed as required by Section 29 of the contract.

2. No hearing on any specific charges was considered by the Junior Executive. No hearing was held before the Senior Officer or any specific charges filed or any evidence taken. Both the Junior Officer and the Senior Vice-President simply contended that the Company had a right to accept the six-year old resignation.

3. When the System Board was asked to review the proceeding, no additional charges were filed. There was nothing to review except the validity of a six-year old

resignation which had been accepted in February, 1956. The Board itself recognized that limitation and did not purport to find that there were any grounds proven for discharge for cause under Section 29 of the discipline provision of the contract.

Then the Lower Court refused to pass on the only question which the System Board itself passed on, and held that the mixed-up proceedings were the equivalent of a hearing for discharge for cause. The Appellate Court in substance held that any time an air line pilot under the Railway Labor Act certifies any question to the System Board, regardless of whether the procedure had been properly followed, or whether there was any provision in the contract to provide for recognition of a resignation, that that Board, even though it acted wholly without any jurisdiction granted to it under the contract, had the right to pass on collateral questions, and that its decision was final, that the Courts could not review it, and that the pilot was discharged.

In the case of *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, U.S.C.A. 5, January 19, 1956, the said Court in its opinion recognized that under the Florida law all administrative remedies must be exhausted before any litigant can petition the Courts for review, and the Court in that opinion said (p. 16):

> "The question in this case is whether Florida law or federal law governs the reviewability of an award made by such a board in interpreting a collective bargaining agreement negotiated under the duty to bargain imposed on air carriers and their employees by the Act. Florida law makes unenforceable any agreement to arbitrate future disputes and thus would strike down the provision in the agreement that awards of the Pilots' System Board of Adjustment shall be final and binding. Appellant urges that it likewise

allows the review of any pure question of law. However tenuous the distinction between so-called 'unmixed' questions of law and those requiring the deciding of a factual issue also, the appellant contends that we have such a pure question of law before us here in the problem of interpreting the collective bargaining agreement.

Without passing on the issue of whether such a rule exists in Florida, it becomes plain upon a moment's reflection that such a system of review would completely sweep aside Congress' efforts to provide for a prompt and orderly settlement of labor disputes by system boards of adjustment. Moreover, such a result would obtain solely as a matter of compliance with Florida's contrary policy of allowing disputants a court review of their disputes, regardless of their agreements to arbitrate those questions with finality. It would rest the effectiveness of the statutory plan upon the variegated characteristics of state law, and eventually lead to the anomaly of a National Air Transport Adjustment Board whose decisions, except in awarding money, *must* be final, existing alongside coordinate system boards in Florida whose decisions cannot be final. Although the parties could achieve what they have here sought, a final decision by a board versed in the problems of the industry, by electing to come under the national board, they would lose thereby whatever advantages there are in operating under a board established by a single carrier and its employees.

We see no reason to force such an election. Congress having required the negotiation of collective bargaining agreements, and the establishment of boards of adjustment to interpret them, we deem it a reasonable corollary thereto that it intended that the scope of review in appeals from these boards should be determined by federal courts, applying federal law. In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to

> make the awards of such boards final and binding. Therefore, giving normal effect to these words we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding."

In the dissenting opinion (p. 19), the Judge writing it pointed out that this Court in *Transcontinental & Western Air, Inc.*, v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325, conditioned this rule upon compliance with any existing state policy requiring the exhaustion of administrative remedies and pointed out (p. 24):

> "If the state law demands exhaustion of the administration remedy, the suit, even though Federally permitted, cannot be maintained."

In that dissenting opinion it was pointed out that since Sigfred was required either by the Florida law or by reason of the authoritative decision which Pan American was then not free to question, to pursue his remedy through the System Adjustment Board, it was evident that, in assaying its impact upon his rights, his election was not voluntary.

We are willing to accept the theory of the *Sigfred* decision, although we do not agree with the conclusion of the majority, but in this case the procedure guaranteed to the litigant, the employee, required that he be given specific notice of grounds for discharge that he have a right to a hearing on those specific grounds before the administrative officer, to wit, a junior official; that if he could not adjust the matter with the junior official, then he had a right to a full-scale hearing before the Senior Vice-President in Charge, at which all the testimony would be taken and a complete record made; that if he then felt aggrieved by the decision of the Senior Executive, he had a right to review that proceeding before the System Board, but not to

have a complete trial *de novo* where the employee is to be met by new challenges, new charges and new evidence which was not even submitted in the first two steps of the proceeding.

The System Board was not the initial Board. It was simply a Review Board. It was not a Board or "Court of First Impression".

At the time this matter was submitted to the System Board, there was only one question, and that is whether the Company had the right, in view of the provisions of the Railway Act, to exact a resignation from a pilot of long standing in the Company, not as a condition of his immediate discharge and severance from the Company, but as a condition for his reinstatement.

Such a condition would render the entire theory of the Railway Labor Act a farce. It would be so clearly against public policy that the whole background of the Act would simply become a moot question.

For the Courts to give protection and validity to such an arbitrary power in the System Board would be contrary to every concept of American Judicial Interpretation. To advocate and to uphold that rule would create a virtual state of peonage which is utterly shocking in view of the continual rulings by this Court as to the basic concept of American Justice and American doctrine of due process of law.

The District Court and the Appellate Court assumed certain factual conclusions from the old proceedings which led up to the resignation of July 28, 1950. The mere use or consideration given to that old record was not only misleading, but the Board had no jurisdiction to make those conclusions when there were never any conclusions made by the System Board of Adjustment in 1950.

Briefly summarized, it would appear that a tower operator at the Detroit Airport, an employee of the Civil Aeronautics Authority, filed a complaint that Captain Paul Woolley had come too close to his tower in making a take-off in the winter of 1950. In other words, these were charges made directly by the C.A.A. Based upon that charge by an official of the C.A.A., Captain Woolley was suspended, not discharged, pending an investigation. Apparently the C.A.A. official withdrew his charges. Just what happened to those charges, or why they were withdrawn, certainly does not appear in this record. It is safe to assume that when the C.A.A. investigated the charges made by one of its officials, it must have recalled them or determined they were not well founded, because it did not press the charges.

Whether Captain Woolley was properly represented, or whether he knew the charges had been withdrawn, or whether he had any reason to believe that there was any basis for the charges, is not clear. The record does not show why the C.A.A., which had made the claim or reported the alleged violation in the first place, was willing to withdraw its charges and to permit Captain Woolley to go back to work. His license was not impeded in any way. The C.A.A. had made no request that Captain Woolley be suspended, and there is no showing that it insisted that when the Company put Captain Woolley back to work, he be disciplined in any way. This was not a charge which the Company had made against Captain Woolley, but one which had been made by the C.A.A. to the Company, which in turn acted up to a certain point in the investigation of that charge.

Neither of the Courts reviewing this matter found that a resignation policy, whereby the Company as a condition for the employment exacted a hidden resignation,

was in accord with the Railway Labor Act. The law is very clear that such a proposition when applied to either a Federally created board or a State board or involved in civil service regulations, is utterly void. See *Watkins* v. *City of Seattle*, 99 P. 2d 427, 432; *Poland* v. *Glovers District Court of New York*, 111 F. Supp. 675; *State ex rel. Murtagh* v. *Department of Civil Servic* , 42 So. 2d 65-69; *National Railroad Adjustment Board, First Division, Award No. 5269, Docket No. 9519.*

The District Court and the Court of Appeals in their respective opinions have failed to comment on the legality of such a resignation. We have not been furnished with any citations in any of the opinions which are in conflict with the rules set forth in the above cases.

We are simply confronted with a letter accepting the 1950 resignation written by Mr. S. L. Shannon, Senior Vice-President in Charge of Operations of Eastern Airlines, and he in his first letter simply discharges Captain Woolley by accepting a six year old resignation. That was the only question brought before the Junior Official. There was no hearing before Shannon as required under the second provision of the contract. No testimony was taken, no record made. Shannon, the Vice-President, simply said in his letter of March 2nd, as above mentioned (Opinion, p. 5):

> "* * * my letter to you of February 20, 1956 still stands."

That was the only thing which could have been certified by either party to the System Board of Adjustment under the discipline procedure. That System Board did not find that Captain Woolley was liable for discharge for cause. Either the resignation was legal, or it was contrary to the provisions of the National Railway Labor Act.

Just where that Board injected the doctrine that the resignation was legal if it was not to be exercised or acted upon arbitrarily, we cannot tell. There is nothing in the letter, nothing in the record.

What is "good cause"? "Good cause" might be a set of facts which would satisfy Mr. Shannon but would not constitute specific objections or grounds for discharge under Section 29. Mr. Shannon was a member of the four-man Adjustment Board. He testified as a witness while he was a member of that Board. He had made the original charges vague and indefinite, simply accepting the resignation. The Board throughout the hearing continuously ruled that it was only going to permit testimony to be introduced as might have a bearing upon the right of whether to accept or not accept the resignation. The only issue was a false collateral issue, as to whether Mr. Shannon was acting in good faith when he accepted the resignation. He was the prosecutor, the accuser, a member of the Board which was reviewing his own decision as a Senior Officer. Regardless of what he had in mind, the Board officially ruled that it was not considering any of the evidence from the standpoint of the legality of the discharge or the substance of any charges, unless they had a bearing upon whether the Company was acting in good faith in accepting the six year old resignation.

In the case of *Edwards* v. *Capital Airlines*, 176 F. 2d 755, decision from the United States Court of Appeals, District of Columbia Circuit, it was provided:

> "Provision in contract between air line and union that award of 'System Board of Adjustment' created under the contract to determine disputes, shall be 'final and binding' could not prevent non-union employees from securing judicial review of an adverse award made where board was composed of two representatives of

union, which was opposed to non-members' position, and two representatives of company, which was neutral."

The Court said in defining the type of power or jurisdiction of an Airline Adjustment Board (760):

"This Board is not the Railway Adjustment Board, whose functions and power are fixed by the statute. This is a board created by contract. But the right to create it was reserved to the parties by the original Act, and a duty to create it was imposed, by a later amendment, upon 'every carrier and * * * its employees, acting through their representatives.' This gives it a public character that cannot be ignored.

The statute makes the awards of the National Adjustment Board 'final and binding upon both parties to the dispute'. Nevertheless, the courts have indicated definite views that under some circumstances such awards are subject to judicial examination. This court, speaking through Mr. Justice Rutledge, indicated that thought in Washington Terminal Co. v. Boswell, and the Circuit Court of Appeals for the Third Circuit did so in Dahlberg v. Pittsburgh & L. E. R. R., Steele v. Louisville & N. R. R., dealt with another phase of collective bargaining, the negotiation of a contract, but in the course of its opinion the Supreme Court discussed the grievance procedure and the Adjustment Board. It reflected the idea of a limitation upon the term 'final and binding' and indicated its view that the awards of an Adjustment Board chosen in large part by those against whom the real complaint is made, are not immune from judicial scrutiny. The Court also held in that case and in Tunstall v. Brotherhood that a minority whose interests are not represented by a union, has rights derived from the statute and is without an adequate administrative remedy. In Elgin, J. & E. R. R. v. Burley, the Supreme Court dealt with an award by the Adjustment Board. We need not relate the opinions in that case in detail. The problem there was dif-

ferent from the one here, and so the decision does not control. But the Court made clear its view that Congress did not intend 'to submerge wholly' the minority interests in grievance procedure. It said:

'In the view we take the Act guarantees to the aggrieved employee more than merely the right to be heard by the union and the carrier. * * * All of these provisions contemplate effective participation in the statutory procedures by the aggrieved employee.

* * * the drastic effects in curtailment of his preexisting rights to act in such matters for his own protection would be most obvious in two types of cases: * * * the other, where the interest of an employee not a member of the union and the collective interest, or that of the union itself, are opposed or hostile.'

* * *

Even in a National Adjustment Board proceeding directly under the statute itself, the courts may look at the actualities of a dispute and the adjudication of it and will not be foreclosed by either assumptions or provisions that the collective agent acts in complete protection of the rights of each and every employee."

A similar question was passed upon also by this Court in the case of *Pennsylvania Railroad Company* v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480, decided February 25, 1957. As we understand the majority opinion, the Supreme Court of the United States held that the courts had the right in certain cases to review a decision of the National Railroad Adjustment Board. After there had been a decision by the Railroad Adjustment Board certain trainmen brought a suit in the United States District Court, Western District of New York, 128 Fed. Supp. 429, and that Court denied the application for an injunction and granted the motion to dismiss the complaint. The United States Court of Appeals (229 F. 2d 171) reversed the judgment and remanded the

cause, and the Brotherhood and the Railroad together brought certiorari to the Supreme Court of the United States.

The Court of Appeals decision was reversed, but apparently on the substance and the merits, and not because the Adjustment Boards had final jurisdiction and the courts had no right to review it.

Mr. Justice Frankfurter, in specially concurring with the balance of the Court, objected to the reasons advanced by the Court, because he determined from various dissenting opinions from which he quoted, that the Courts do not have the right to review the System Board action. In the dissenting opinion (77 S. Ct. 431) it was said:

> "Right or wrong, a court has no jurisdiction to review what the System Board did, unless a complainant asserts arbitrariness and seeks to enforce the limited protection established in the Steele case."

The *Steele* case referred to was *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173.

In that case (Headnote 6) it was said:

> "The purpose of providing by statute for collective bargaining is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group, and the benefits of the statute are open to every employee of the represented unit."

Under this decision, it is respectfully claimed that since Captain Woolley was bound by the contract, neither he nor the Company could make any agreement covering special rights or privileges by either one against the other. It is admitted that there was no provision in the bargaining contract to provide for any special class of employee who could be removed at will or at the whim of the Company

simply by giving a resignation prior to employment. We find no such contention being made by the Union in this case. No such contention has been found in either of the opinions of the Lower Courts, and yet, notwithstanding the absence of any such provision in the contract, we find the Lower Court upholding as a substitute this procedure, which could only have been as the result of an arbitrary attitude of the Court, going far beyond any attempted claim of jurisdiction by the Adjustment Board. The Union in the preliminary stages of this proceeding, through the attorney furnished by the Union to represent Captain Woolley, strongly contended that there was no such provision in the contract; that that power had not been granted to any feature of the discipline action or to the Junior Officer, the Senior Officer or to the System Board of Adjustment; that it would be contrary to the public policy, and that the acceptance of the resignation was a nullity.

However, when the System Board, contrary to the contention made by the Union, arbitrarily took jurisdiction and held that it could approve the acceptance of the resignation if it was in good faith, then the Union shifted sides and vigorously opposed petitioner in the Circuit Court of Appeals. To say that this was merely an inconsistent position would be the under-statement of the year. We think it is obvious that there was a degree of arbitrariness and lack of proper procedure self-evident from that fact alone.

In a case not exactly similar but which had some basic points of similarity, the United States Court of Appeals for the Fifth Circuit, *Moe* v. *Eastern Air Lines, Inc.*, 246 F. 2d 215—June 18, 1957—Opinion by Borah, Rives and Brown, Circuit Judges, which constituted a different division of the same Court which ruled in this case, reiterated that the System Board of Adjustment under the bargaining contract

was final unless there was some other power or duty contained in the conflicting statute known as the Universal Military Training Service Act, 50 U.S.C.A., Appendix 459.

But a study of that case will disclose that the Court was in great doubt about its duties and its jurisdiction under the National Railway Labor Act where an airline pilot was involved.

Just prior thereto, the United States Court of Appeals, Seventh Circuit, in the case of *Ellerd* v. *Southern Pacific Railroad Co.*, 241 F. 2d 541, First Division of the National Railroad Adjustment Board, said this:

> "In absence of any question concerning regularity of proceedings before National Railroad Adjustment Board, for lack of notice or other defect preventing due process of law, federal district court has no right to review order of board; if that body has jurisdiction and proceeds according to constitutional guarantees, its decision is final."

In that case there was a suit filed by an employee of the Southern Pacific Railroad to review and set aside an award of the National Railroad Adjustment Board to restore him to employment and seniority rights. The United States District Court for the Northern District of Illinois, Eastern Division, rendered summary judgment for the defendant, and the plaintiff appealed. The Court of Appeals, through Judge Lindley, Circuit Judge, held (541):

> "* * * if employee had been deprived of due process of law by action of union in unauthorizedly representing employee in employee's claim for reinstatement before National Railroad Adjustment Board, award of board would be subject to judicial review."

That Court (p. 544) reviewed many of the decisions of the Federal Courts, including a review of the case of *Sigfred* v. *Pan American World Airways, Inc.*, 230 F. 2d 213,

5th Circuit, and reached the conclusion with reference to the System Board (544):

> "If that body has jurisdiction and proceeds according to constitutional guarantees, its decision is, in the words of the statute, final."

In that case there was a summary judgment for the defendants, just as there was in this case. In the *Ellerd* case (*supra*) the claim was made that he, Ellerd, was not represented or had not given authority to the Union to represent him in presenting his claim to the Adjustment Board.

The attack made in the *Ellerd* case was that the Adjustment Board had no jurisdiction, and because the Board had acted in an arbitrary and capricious manner. But the Appellate Court reversed the District Court which had dismissed the case on summary judgment, and the case was sent back for further trial to determine whether or not the plaintiff, the employee, had been denied due process of law.

That, in effect, is all we had asked for in this case. We claim that the petitioner has been denied due process of law because the Board did not have any jurisdiction by implication. It had jurisdiction only to construe and determine matters which were within the four walls of the bargaining contract. It had no power to reach out and grab unrelated and collateral matters, and after admittedly refusing to pass upon whether there was any question of discharge for cause under Section 29 of the contract, arbitrarily hold that the mere acceptance of the six year old resignation was the equivalent.

There is one other phase to this case about which we will comment because the Lower Court, as well as the Appellate Court in its opinion, after holding that the Courts

had no jurisdiction to review the decision of the Adjustment Board, then proceeded to search through the half-completed record and do a job and perform a service and exercise a jurisdiction which the Adjustment Board itself had not even purported to entertain, because it held that its review of the record, such as it was, disclosed there had been an equivalent to a trial and a discharge for cause under Section 29 of the contract.

It is difficult for us to conceive how the Lower Court and the Appellate Court, on the one hand, uphold the sacred act of Congress in holding the employee strictly to account, and then on the other hand completely ignore the limitations of the Congressional Act and uphold a decision as a discharge on merit or cause, when the Board, by its own findings and its own actions, ruled that it would not consider that an action for discharge on the merits, and that if it decided to do so, it would only be after further argument and the reopening of the case for further pleadings and testimony.

Therefore, we will not take issue with the merits of the fact findings by the Lower Court and the Appellate Court because clearly that was not within any purview of the issues presented to either of the Courts for solution.

In the case of *Nilva* v. *United States*, 77 S. Ct. 431, 252 U.S. 385, at least four members of this Court in a dissenting opinion have recently said (441-442):

> "Where a trial judge bases his decision in part on evidence which although material is inadmissible the conviction cannot stand even though an appellate court might conclude after expunging the bad evidence that enough good remained to support the conviction. The defendant is entitled to a decision by the trial judge based on that judge's evaluation of the proper evidence. It is no answer to say that the trial judge

could have found the defendant guilty solely on the good evidence. He did not and the defendant is entitled to a retrial. The danger of prejudice from inadmissible hearsay was particularly grave in this case since the admissible evidence before the trial court was so grossly inadequate.

The erroneous admission of portions of the record from the earlier trial accentuated another in propriety in the proceedings below. I believe that it is wrong in a Rule 42 (b) proceeding for the same judge who issued the orders allegedly disobeyed and who preferred the charges of contempt on his own initiative and based on his own knowledge to sit in judgment on the accused. In essence, this allows a man who already believes that another person has disobeyed his command to act as both prosecutor and judge in a proceeding to 'decide' formally whether that person disobeyed him and should be punished. It is contrary to elemental principles of justice to place such power in the hands of any man. * * * Here, besides issuing the orders allegedly disobeyed and then citing petitioner for contempt, the trial judge was intimately involved in earlier proceedings from which the contempt charge developed and in which evidence relevant to that charge was presented. Under such circumstances he would have been super-human not to have held preconceived views as to petitioner's guilt."

When we apply that rule, which seems to relate to substantial justice and common sense, then how could the procedure in this case stand the test of due process, considering the action of the Union, its opposition to the petitioner for whom it was supposed to act, the position of Mr. Shannon as the Vice-President of Eastern Air Lines, sitting both as the Senior Officer, the one who made the charges, a member of the four-man Adjustment Board, and the chief witness for the Board, and who had originally been the instrument by which the old 1950 proceed-

ings against the petitioner had been dismissed, and by whom the reinstatement and re-employment was effectuated through the demanding of an illegal and inoperative resignation. How could there have been a fair trial or due process before the Adjustment Board under these circumstances?

We respectfully urge that the decision of the Lower Court and of the Court of Appeals should be reversed and the cause remanded for further proceedings, and that certiorari be granted.

Respectfully submitted,

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami 32, Florida,
Attorney for Petitioner,
Paul S. Woolley.

APPENDIX A.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16585.

PAUL S. WOOLLEY,
Appellant,

vs.

EASTERN AIR LINES, INC., ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(December 5, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

TUTTLE, Circuit Judge: This appeal presents the question whether the District Court has the power to entertain a suit for reinstatement with back salary of an air line pilot who has previously voluntarily submitted his case to the System Board of Adjustment, created under

the authority of the Railway Labor Act, 45 U.S.C.A., §184, and has been denied relief.

Appellant Woolley had been laid off in 1950 by Eastern Air Lines for alleged unsafe flying practices. After considerable negotiations conducted on his behalf by the Air Line Pilots Association, his bargaining representative, the company agreed to take him back after six months suspension on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President of Operations "at any time in the future, should you personally feel that I am not handling my job in the proper manner."[1]

---

[1]This letter was in the following form:

"July 28, 1950

"Mr. S. L. Shannon
Vice President—Operations
Eastern Air Lines, Inc.
Miami, Florida

Dear Mr. Shannon:

First let me say that I sincerely appreciate the opportunity that you are giving me to come back on the line as captain.

Naturally, the six months layoff without pay for my improper handling of flight 703 at Detroit on January 29, 1950 has been hard to take. However, I have had plenty of time to think about it during my enforced absence from the line, and I realize that I was wrong in this case and have been wrong in the other cases in the past, where I have been called on the carpet or disciplined by Management. I have made up my mind that I must behave myself if I expect to continue as an employee of Eastern Air Lines.

Therefore, I hereby state that you may consider this letter to be my letter of resignation as an employee of Eastern Air Lines, which you may accept at any time in the future, should you personally feel that I am not handling my job in the proper manner.

I sincerely hope that I will be allowed to continue as an employee with Eastern for many years to come, and I want to assure you that I shall do everything in my power to keep it that way.

Very sincerely yours,

Paul S. Woolley"

On February 20, 1956, Eastern wrote a letter to Woolley purporting to accept the resignation by using the words contained in his letter of July 28, 1950, "I personally do not feel that you have been handling your job in the proper manner."[2] Thereupon Woolley replied by stating that he had been discharged without the benefit of the grievance procedures provided in the collective bargaining

---

[2]The letter is quoted in full:

"EASTERN AIR LINES
Incorporated
Member of the National Safety
Council
Miami International Airport
Miami 48, Fla.

February 20, 1956

Captain Paul S. Woolley
Eastern Air Lines, Inc.
Miami, Florida

Dear Captain Woolley:

"In reference to your letter of resignation dated July 28, 1950 please be advised that I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Inc. is hereby accepted to become effective immediately.

"Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the Company.

"Very truly yours,

(Signed) S. L. Shannon
S. L. Shannon
Senior Vice President"

agreement, specifically an investigation and hearing.[3] In response to this Eastern replied that this was the acceptance of a resignation rather than a discharge, but that the writer would talk to Woolley two days later, and then stated that the company's action had been "based in large part on unsafe flying of" a certain flight and Woolley's

---

[3]This letter follows:

"February 27, 1956.

800 Palerno Avenue
Coral Gables, Florida

"Mr. S. L. Shannon
Eastern Air Lines, Inc.
Miami International Airport
Miami 48, Florida

Dear Mr. Shannon:

"Receipt of your letter of February 20, dismissing me as a pilot for Eastern Air Lines, Inc., is acknowledged.

"Under the agreement between Eastern Air Lines, Inc., and the air line pilots in the service of Eastern Air Lines, Inc., as represented by the Air Line Pilots Association, International, Section 29, sub-section A. Paragraph numbered 1, it is provided that a pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and shall not be dismissed or disciplined without an investigation and hearing, provided the pilot makes a written request for an investigation and hearing within seven days after receiving such notification. Contrary to that provision, I have been dismissed without an investigation and hearing.

"I hereby make written request for an investigation and hearing as provided in the Section referred to. Will you be kind enough to advise me of the date for the investigation and hearing.

"With kind regards, I am

Very truly yours,

PAUL S. WOOLLEY,

800 Palerno Avenue
Coral Gables, Florida"

"handling of another flight."[4] Wooley went to the office of the vice president Shannon and there discussed everything he cared to discuss with him about the matter. He made no request for any other or further hearing or investigation and he did not ask for any further specification of

---

[4]This letter follows:

"Eastern Air Lines
Miami International Airport
Miami 48, Florida

February 27, 1956.

"Registered Mail
Return Receipt Requested
"Mr. Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida

"Dear Mr. Woolley:

"This will acknowledge your letter of February 27, 1956. My letter to you dated February 20, 1956 was simply an acceptance of your resignation. Consequently I do not think Section 29 of the Agreement between Eastern Air Lines and the Air Lines Pilots Association is applicable. However, if you wish to discuss the matter with me I will be glad to talk with you on Wednesday, February 29, 1956, at 10:00 a.m. in my office.

"For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956 enroute into Miami. Your conduct in handling those flights confirms other information which has come to my attention from time to time.

"Very truly yours,

(S) S. L. SHANNON,
(S. L. Shannon),
Senior Vice President."

charges. On March 2nd he received a further letter from Shannon,[5] adhering to the original action.

Thereafter Wooley asked the Air Line Pilots Association to take the matter to the System Board of Adjustments, which was done. A full hearing was had before the Board, which resulted in a decision favorable to the air line.[6]

---

[5]This letter follows:

"Eastern Air Lines
Miami International Airport
Miami 48, Florida

March 2, 1956.

"Captain Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida

"Dear Captain Woolley:

"This is to confirm what I told you February 29th in my office when you came in to discuss your case.

"I am not changing my decision, and my letter to you of February 20, 1956 still stands.

"Very truly yours,

(S) S. L. SHANNON
(S. L. Shannon),
Senior Vice President.

"SLS:eh
Registered Mail
Return Receipt Requested."

[6]The Board's order follows:

"BEFORE THE
EASTERN AIR LINES PILOTS SYSTEM
BOARD OF ADJUSTMENT
In the Matter of the Grievance of:
Paul S. Woolley

DECISION OF THE BOARD OF ADJUSTMENT

"The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there

Woolley thereafter filed this suit joining the Eastern Air Lines, the Air Lines Pilots Association, International, and the individual members of the Board of Adjustment, as defendant. In it he sought a declaratory judgment determining his rights and a mandatory injunction requiring the Board of Adjustment to "cancel and discharge" their adverse order and requiring the air line defendant to reinstate him with back pay and benefits "unless and until the said Eastern Air Lines, Inc., shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has

---

was not sufficient cause or ground for his involuntary dismissal.

"The Board finds: 1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

"2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

"3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

"4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

"Decision of the Board: Grievance denied.

"Signed at Miami, Florida, August 1, 1956.

"S. L. Shannon
Co. Member, S. L. Shannon

"R. W. Rivenbark
Chairman, R. W. Rivenbark
R. M. Tedlock
Pilot Member, R. M. Tedlock
George A. Smith
Co. Member, G. A. Smith."

had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause."

It will be seen from the prayers of the complaint that its purpose was to review and have set aside the decision of the System Board of Adjustment. The first question that must be resolved, therefore, is posed by the contention of the appellees that in the circumstances here outlined the courts are in effect ousted of jurisdiction. If this contention is correct we need proceed no further in an effort to appraise the correctness of the Adjustment Board's decision.

The Supreme Court has not directly passed on the question here posed. The statute authorizes the creation by air lines of system boards of adjustment to aid in the stated policy of avoiding any interruption to commerce and providing for the prompt and orderly settlement of labor disputes, including those arising out of the interpretation or application of collective bargaining agreements, 45 U.S.C.A. §151(a).[7] Reference to the various provisions of the Railway Labor Act makes clear that such system boards are given the authority to make final binding decisions touching on the application and construction of collective bargaining agreements, especially if the bargaining agreement expressly includes the right of appeal to such a board and if the articles between the air line and the bargaining agent setting up the system board expressly state, as does that of Eastern Air Lines Pilots System Board of Adjustment, that "decisions of the Board in all

---

[7]For a statement of the statutory authorization for the creation and statement of the powers of the "system board of adjustment," including the interrelation of the board with the National Mediation Board, see Sigfred v. Pan American World Airways, (5 Cir.) 230 F. 2d 13 at page 16.

cases properly referable to it shall be final and binding upon the parties thereto."

It is to be borne in mind that no air line pilot is required by the collective bargaining agreement or by the law to take his dispute to the system board of adjustment. The two Supreme Court decisions in *Slocum* v. *Delaware L. & W. R. R.*, 339 U.S. 239, and *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630, make clear the election that is available to the employe. If he determines that he will treat his grievance as involving a determination of rights as an employe under the bargaining agreement and asserts his rights to be retained as an employe he must go to the board for redress. If he accepts the action of the carrier as a final discharge he may sue in court for a breach of the contract of employment. He may not do both.

In light of the fact that any recourse had to the board is the result of voluntary choice, we did not hesitate in the Sigfred case to hold:

> "In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to make the awards of such boards final and binding. Therefore, giving normal effect to these words, we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding. James Richardson & Son v. W. E. Hedger Transportation Corp., 2 Cir. 98 F. 2d 55." *Sigfred* v. *Pan American World Airways*, (5 Cir.) 230 F. 2d 13, 17.

This Court has held to the same effect in *Majors* v. *Thompson*, (5 Cir.) 235 F. 2d 449, where at page 451 we said:

> "Where the employee has voluntarily applied to the Board for reinstatement an election of remedies has been made which bars the right to litigate before

the courts a claim of damages for wrongful discharge. Michel v. Louisville & N. R. Co., 5 Cir., 1951, 188 F. 2d 224. See also Sigfred v. Pan American World Airways, 5 Cir., 1956, 230 F. 2d 13, certiorari denied 76 S.Ct. 782; Coats v. St. Louis-San Francisco R. Co., 5 Cir., 1956, 230 F. 2d 798."

There can be no doubt here that the board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction. It cannot therefore be questioned that, in the language of the articles establishing this particular System Board of Adjustment the case was "properly referable to it."

We hold therefore that the rule of stare decisis requires that we adhere to the Sigfred and Majors opinions and hold that the complaint did not state a claim against defendants upon which relief could be granted.

As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court. We therefore deem it appropriate to discuss briefly the other issues raised on the appeal.

Appellant contends that the trial court erred in entering a summary judgment on the theory that the issue as to the correctness of appellant's dismissal had been clearly presented to the Board and that the Board's finding that the air line acted "for good and sufficient reasons and . . . not arbitrarily or capriciously" deprived it of "authority to set aside the Board's decision."

It is not necessary, in the view we take of the case, to determine whether the proceedings in the trial court partook of the nature of a review of the Board's action

or of a trial de novo.[8] All parties proceeded in the trial

---

[8]Under our initial determination that the suit could not be maintained, we would of course not reach this question.

court on motions for summary judgment on the assumption that the trial court had the power to enter final judgment on the record of the proceedings before the Board. The Board construed the letter of resignation of July 28, 1950, as permitting the air line to accept it "for good and sufficient reasons but not arbitrarily or capriciously." It heard extensive testimony and considered documentary evidence which fully warranted the Board's decision that the air line had good and sufficient reason for accepting the resignation. The record would warrant a finding that Woolley repeatedly, knowingly and intentionally disregarded company rules for the protection of the safety of its passengers and that he showed a callous attitude towards these rules and regulations. The Board accepted some of this testimony, as it said, only as bearing on the sufficiency of reasons for accepting the resignation and not to be considered as being sufficient basis for grounds of discharge, if the Board held the resignation ineffective. As we have said, the Board held the evidence constituted "good and sufficient reason" to accept the resignation.

The trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge, and without expressly deciding whether the action of the defendant air line was an authorized acceptance of an outstanding resignation or a discharge for cause, stated that

> "The issue being thus clearly presented to the Board and the Board having decided that the Defendant Eastern Air Lines acted 'for good and sufficient

reasons and that the Company did not act arbitrarily or capriciously', this Court does not have any authority to set aside that Board's decision."

We think this decision was correct. It is clear that if the action of Eastern is to be construed as a discharge then there was sufficient competent evidence of unsafe flying on the two specific flights #644 and 647 to support not only a finding of sufficient reason for accepting the resignation but also to support a finding of adequate grounds for discharge. All of the testimony of co-pilot Hughes, together with his written report and the verifying records of communications were introduced and received free of any objection that they were not relevant for all purposes. They made out a case of dangerous and unsafe approach to the Boston airport on flight 644 and a wilful flight through a danger area at Patrick Air Force Base in the face of specific warning to stay clear on flight 647. The latter act was accompanied by credible evidence of an attempt by Woolley to misstate the time when reporting from Vero Beach.

There is no merit in the contention that the issue of the validity of his discharge (if it is to be so considered) was not before the Board. Although the letter of February 20th notifying Woolley that his resignation was accepted did not specify the "precise charge against him," the letter of February 27th did do so, and it also provided an opportunity for a hearing, as contemplated in section 29 of the contract of employment. At least Woolley did not make any request for more specific statement or additional hearing. When he thereafter appealed his case to the Board, he waived any procedural defect such as the right to further specific charges or additional hearing and the Board was justified in making its decision, so long as it had ample basis for deciding the case on the evidence adduced

as to the two charges that were actually made. The evidence here was amply sufficient.

Finding as we do that the Board of Adjustment had full jurisdiction invoked by appellant himself, and that there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack, the decision of the Board was final and binding and may not be reviewed. Further, should this view formerly expressed by this Court be untenable, nevertheless we find that on the record here the finding of the trial court that the decision of the Board was fully supported and thus was not reviewable on the merits is right.

The judgment will be AFFIRMED.

APPENDIX B.

Judgment.

Extract from the Minutes of December 5, 1957.

No. 16585.

PAUL S. WOOLLEY

vs.

EASTERN AIR LINES, INC., ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paul S. Woolley, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.